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UNITED STATES DISTRICT COURT

2008 APR -9 PM 5:15

NORTHERN DISTRICT OF CALIFORNIA

Michael Cook
RICHARD COOK
U.S. DIST. COURT
NO. 07-5085

U.S.A.

Plaintiff,

v.

Defendant.

Case No. C 07-6068

C 07-5085

The above-named plaintiff makes the following representations to this court for the purpose of obtaining judicial review of a decision of the defendant adverse to the plaintiff:

1. The plaintiff (whose Social Security Account No. is

3056) is a resident of Delano,
CA City
State

2. The plaintiff complains of a decision which adversely affects the plaintiff in whole or in part. The decision has become the final decision of the Secretary for purpose of judicial review and bears the following caption:

In the case of

Michael Cook

Claimant

Michael Cook

Wage Earner

claim for

~~Federal~~ Social Security
Disability benefits

~~SS~~ 3056
Social Security Number

3. The plaintiff has exhausted administrative remedies in this matter and this court has jurisdiction for judicial review pursuant to 42 U.S.C. 405(g).

WHEREFORE the plaintiff seeks judicial review by this court and the entry of judgment for such relief as may be proper,

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Plaintiff Michael Cook, would like to present
the following Fact's of law in regard to
The matter of Cook v United States of
America.

1. Plaintiff was mailed (SS) benefit checks during
the Month's and year's of Oct, Nov, Dec 2001, Oct Nov
Dec 2002. At the same time these checks were
mailed and delivered to plaintiff, he acquired both
a property interest also a security interest in the
instruments. THE instruments were paid through Statutory
Entitlement of Social Security benefits due to
Plaintiff being found to be disabled.
2. The mailed checks were accidentally returned to
Sender. Plaintiff became aware of this fact (please see
(exhibit # 1 and 2) then contacted the defendant
simply requesting that the returned checks be
forwarded to the current address he resides.
3. THE defendant then contacted plaintiff and
expressed that the checks were paid in
error constituting an over payment. Plaintiff then
requested to appeal this determination. The
defendant complied with plaintiff's request then
denied plaintiff recovery of the returned checks.

Plaintiff then requested a Statutory hearing before an administrative law Judge. Initially the defendant agreed to proceed with the hearing acknowledging that due process is flexible and that the hearing would proceed even though Plaintiff is at the present time incarcerated. The defendant then denied plaintiff this hearing expressing that the hearing would take place once Plaintiff is released from incarceration.

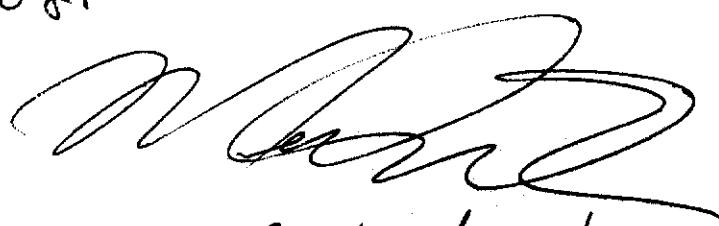
4. Plaintiff now would like to express to the Court, that for the defendant to take this action would clearly be a violation of Plaintiff's due process rights, in that due process requires a hearing of some kind prior to recovery of payments made that are being expressed as being overpayments see Thomas v. Weinberger 384 F. Supp. 540 S.D.N.Y. 1974) At the present time the defendant is in fact denying plaintiff his statutory right to Due process before deprivation. It needs to be expressed that plaintiff has at least another ten years on his sentence. It also needs to be expressed that plaintiff has now filed his second action due to the defendant's breach of agreement to comply with Plaintiff's due process rights on two occasions. It is now Plaintiff's request that the Court acknowledge these facts and now order the defendant to forward all returned checks to Plaintiff at

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the current address he resided. These checks were paid constructively, constructively received, also are now in plaintiff's constructive possession. Plaintiff is at the time the holder in due course of the check, also the owner due to the checks being assigned to plaintiff. Plaintiff at the time holds legal title to the returned checks, the checks were neither indorsed or negotiated back to the defendant. Due to all the facts of law stated in this complaint also with the included exhibits #1 #2. Plaintiff is in fact entitled to the returned checks also there recovery.

respectfully Submitted by

 Michael Cook plaintiff

I Michael Cook, hereby swear by the penalty of perjury that the foregoing is true and correct and can hereby testify to this if called to do so. Executed this 5th day of April, 2008.



Michael Cook

Plaintiff request that this Court utilizes all exhibits included with previous filing to this Court, dealing with the Stone matter MC